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May 13, 1996

Federal Highway Administration  
U. S. Department of Transportation  
Office of Chief Counsel  
Room 4232  
400 Seventh Street S.W.  
Washington, D.C. 20590

FHWA-97-2277-20

SUBJECT: Safety Performance History of New Drivers  
FHWA Docket No. MC-96-6

LEGS/REGS. DIV.

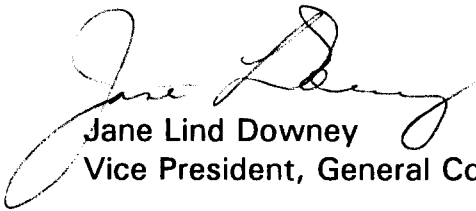
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ADMINISTRATION

Dear Sir/Madam:

The American Movers Conference hereby submits the enclosed  
comments in response to the above-referenced docket.

Yours truly,

  
Jane Lind Downey  
Vice President, General Counsel

Encl

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**BEFORE THE  
FEDERAL HIGHWAY ADMINISTRATION  
U. S. DEPARTMENT OF TRANSPORTATION**

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**COMMENTS OF  
AMERICAN MOVERS CONFERENCE**


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**FHWA DOCKET NO. MC- 96-6  
Safety Performance History of New Drivers  
61 Fed. Reg. 10548  
March 15, 1996**

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**May 13, 1996**

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BEFORE THE  
FEDERAL HIGHWAY ADMINISTRATION  
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AMERICAN MOVERS CONFERENCE

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INTERESTED PARTIES

The American Movers Conference (AMC or Conference) and the AMC Safety Management Council submit these comments in response to the Notice of Proposed Rulemaking (NPRM) of the Federal Highway Administration (FHWA), Docket MC-96-6, Safety Performance History of New Drivers. AMC is the principal national trade association of the household goods moving industry, representing national van lines, independent interstate carriers and local agent movers before Federal and State regulatory and legislative bodies. The AMC Safety Management Council is made up of carrier safety directors who advise AMC staff on safety operational matters.

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## INTRODUCTION

FHWA proposes to amend the Federal Motor Carrier Regulations (FMCSRs) to specify minimum information that a hiring carrier must seek from former employers during the investigation of a driver's previous employment record. FHWA would for the first time specifically mandate submission of the information by the former employer. The new federal requirement for prior employers to provide the information will be extremely helpful for the hiring carrier who has in the past experienced difficulties obtaining the information because of the previous employer's concern about the potential for defamation law suits. There are, however, some aspects of the proposed rule changes that should be reconsidered and limited in scope or clarified before final adoption.

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The Conference joins with and supports the comments filed in this docket by the American Trucking Associations, Inc. and to avoid duplication will restrict our comments to several of the most important concerns for household goods movers.

### COMMENTS

General. Current federal regulations require that a hiring carrier must investigate a prospective driver's employment record for the preceding three years. However, except for alcohol and controlled substances testing, the rules do not specify the type of information to be sought. A written record must be made of the name of any previous employing carrier contacted for information, but the regulations place no mandate on the previous employer to furnish the information. Instead, the burden is placed on the hiring carrier who is simply required to obtain the drug and alcohol results no later than 14 days after the first time a driver performs safety-sensitive functions.

If the regulations are amended as proposed, a prospective or new employer would have to request, and a previous employer would have to disclose within 30 days, much more specific employment information about a prospective new driver:

1. Information relating to any DOT reportable accidents in which the driver has been involved.

2. Any hours-of-service violations resulting in an out-of-service order being issued to the driver;

3. Violations of the alcohol and controlled substances rules of FHWA, or those of any other DOT agency, during the past three years;

4. Any failure of the driver to undertake or complete a required rehabilitation program after receiving a violation of the law or regulations dealing with alcohol or controlled substances of FHWA or any other DOT agency; and any use by the driver in violation of those regulations after completing such a rehabilitation program;

In addition, it is proposed that the information from a previous employer must contain any alcohol and drug information that the prior employer obtained from other previous employers. If a carrier is unable to obtain the required safety information from a previous employer, a record would have to be made of the carrier's efforts and kept in the driver qualification file. A written authorization signed by the driver would have to accompany any requests for information in 3. and 4. above.

The driver would be afforded a "reasonable opportunity" to review and comment on any of the above information obtained by the new employer, and the driver would have to be notified of this review right at the

time of application for employment. The driver is directed to contact the former employer to settle any disputes over allegedly incorrect information, but a carrier would not be responsible for correcting any of the information obtained from previous employers.

Areas of Special Concern to Household Goods Carriers.

1. FHWA has proposed to increase the scope and specificity of required pre-employment information to a level that is burdensome and legally dangerous for carriers.

a. Driver-Specific Out-of-Service Violations Related to Hours-of-Service. An amendment to §391.23[c](1)(ii) would require disclosure of any hours of service violations resulting in out-of-service orders. This proposed new requirement is soundly opposed by the household goods moving industry. Carriers do not currently use this information to screen applicants for several reasons. First, there is no evidence that this information is a good indicator of a driver's safe driving potential. In addition, verifiable data relating to driver responsibility would be difficult to obtain and highly controversial from a driver's as well as a carrier's perspective. Further, it seems premature to assign a direct correlation between the present hours-of-service requirements and driver safety until the FHWA and ATA Trucking Research Institute

fatigue study results have been completed. This proposed amendment should therefore be eliminated in the final regulation.

b. Daisy-Chain of Information From Previous Employers. Under proposed §382.413(a)(1) and (2), a prior employer would have to submit information previously obtained from other carriers. The resulting chain of information could create legal liabilities for carriers as it would require them to repeat any and all information received from previous carriers, some of which might be erroneous and difficult if not impossible to corroborate. Under this arrangement, prior employers would not be protected from liability for disclosure of the "allegedly incorrect" information, and the requirement almost invites lawsuits from drivers rejected by the prospective carrier. The scope of inquiries mandated in this proposed section should therefore be limited to instances that occurred during the driver's period of service with that carrier. There is also a further concern for drivers who could be subjected to potential prejudice where an earlier employer is no longer in business and the information cannot be successfully challenged or corrected.

ATA has proposed, and the AMC supports, an alternative approach that would add language to §382.413(a)(2) requiring



that information obtained from a previous employer include the names of all other known previous employers. This would provide the best basis for the hiring carrier to obtain information from the primary source.

2. Driver's Right to Review. Proposed regulations ~~§~~383.35(f), 391.21(d) and 391.23(d) give a driver the unrestricted right to review and comment on any information furnished by a previous employer, whether or not that information is specifically required by the FMCSRs. The rule states that the hiring employer is not responsible for correcting information challenged by the driver as erroneous, and directs the driver to contact the former employer to "settle disputes over allegedly incorrect information." This situation would undoubtedly open the door to endless controversy between driver-applicants, and previous and prospective employers.

Since carriers sometimes include more information than specifically required by the regulations, the situation would be alleviated somewhat if language is added to the above referenced regulations clarifying that the driver's right to review covers only that information obtained from a previous employer that is mandated by §391.23[c][1] rather than using the broader reference to any information provided. Carriers must be protected from potential legal

liabilities when they are put in the position of responding to requests for driver information. AMC also concurs with ATA's position that the logical time-frame for allowing a driver the opportunity to review and comment on information provided by previous employers is 60 days from the date the employment application is submitted.

3. Legal Liability of Carriers for Information Released. The exposure of carriers to potential legal liability has been a major factor inhibiting the effectiveness of the current provisions relating to driver history inquiries. It would be very helpful for both carrier and driver to include in the rule a requirement that driver applicants be specifically advised of a carrier's regulatory requirement to obtain the information and the obligation of the previous carrier to provide it. To that end, the notification requirements of §383.35(f) and 391.21(d) should be amended to make specific reference to the elements of safety-related history that must be provided. This will assure sufficient disclosure to the driver and, when provided along with the right to review statement, will make the requirement understandable to those involved.

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### CONCLUSION

Overall the NPRM proposals will be very helpful to carriers in their efforts to obtain objective, accurate information on driver-applicants. The changes and clarifications recommended will not deter those safety benefits but only serve only to assure that carriers will not be exposed unnecessarily to potential legal problems.

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